

MAR 17 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICARDO OLGUIN-PLASCENCIA,

Defendant - Appellant.

No. 04-50298

D.C. No. CR-03-00930-RGK

MEMORANDUM^{*}

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICARDO OLGUIN-PLASCENCIA,

Defendant - Appellant.

No. 04-50330

D.C. No. CR-03-00930-RGK

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Submitted March 8, 2006**

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Ricardo Olguin-Plascencia appeals from the district court's denial of his motion for an extension of time to file his notice of appeal pursuant to Federal Rule of Appellate Procedure 4(b)(4) and from his sixty-three-month sentence imposed for being an illegal alien found in the United States following deportation, in violation of 8 U.S.C. § 1326(a).

We have jurisdiction pursuant to 28 U.S.C. § 1291 to review the denial of the motion for an extension of time to file his notice of appeal. Olguin-Plascencia contends that the district court abused its discretion by denying his motion for an extension of time because he demonstrated excusable neglect. He contends that he showed excusable neglect because, at the time the judgment was entered, counsel believed there were no meritorious claims for appeal, but counsel then reassessed the merits of the case in light of *Blakely v. Washington*, 542 U.S. 196 (2004), issued several weeks later.

We conclude that Olguin-Plascencia failed to show that the district court abused its discretion. *See United States v. Prairie Pharmacy, Inc.*, 921 F.2d 211,

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

213-14 (9th Cir. 1990). We therefore affirm the district court's denial of the motion for an extension of time in which to file the notice of appeal.

Because Olguin-Plascencia failed timely to appeal his sentence, we lack jurisdiction over the appeal of his sentence and dismiss. Fed. R. App. 4(b).

Appeal No. 04-50298 is DISMISSED.

Appeal No. 04-50330 is AFFIRMED.